STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 18,205
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying his application for Medicaid assistance for his son. The issue is whether the son is "living with" him for Medicaid purposes.

FINDINGS OF FACT

1. The petitioner is the divorced father of two children. By a Vermont divorce decree dated April 4, 2002, the petitioner's ex-wife was awarded "primary physical and legal rights and responsibilities" for both children. However, the Court gave the petitioner the "legal right and responsibilty" to make medical decisions for his son, an eleven-year-old who has diabetes.

2. The petitioner's ex-wife and children live in Massachusetts and receive Medicaid benefits in that state. The petitioner still sees his son two to three nights per week because he still goes to school in Vermont.

3. The petitioner has had great difficulty directing his son's medical care because he sees physicians in Massachusetts and because he is not the parent with whom the Medicaid system in Massachusetts deals.

4. In order to remedy this problem, the petitioner applied for Medicaid for his son in Vermont. He was denied on September 5, 2002 because his son was not considered a member of his household.

ORDER

The decision of PATH is affirmed.

REASONS

In order to be eligible for Medicaid, an applicant with a child under eighteen must meet "ANFC-related" (now Reach Up Financial Assistance (RUFA)) standards. M 301. The RUFA regulation at W.A.M. § 2242.2 defines an "eligible parent as "an individual who . . . lives in the same household with one or more eligible . . . children." W.A.M. § 2302.1 includes the following provision regarding "residence":

> To be eligible for Reach Up, a child must be living with a relative or a qualified caretaker. . . The relative or caretaker responsible for care and supervision of the child shall be a person of sufficient maturity to assume this responsibility adequately. Parents and children living together must be included in the same assistance group.

"Home" is defined by W.A.M. § 2302.13 as follows:

> A "home" is defined as the family setting maintained, or in process of being established, in which the relative or caretaker assumes responsibility for care and supervision of the child(ren). However, lack of a physical home (i.e. customary family setting), as in the case of a homeless family is not by itself a basis for disqualification (denial or termination) from eligibility for assistance.
>
> The child(ren) and relative normally share the same household. A home shall be considered to exist, however, as long as the relative is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.

When there is some question as to where the child's home is for ANFC-related purposes, such as in a joint custody case, the Board has held (and the Vermont Supreme Court has affirmed) that it is the parent that provides the primary "home" for the children who is eligible for ANFC (now RUFA). Fair Hearing No. 5553; Aff'd, Munro-Dorsey v. D.S.W., 144 Vt. 614 (1984), Fair Hearing No. 11,182.

In this case, the petitioner does not argue that he should be found to have equal or joint physical or legal custody with his ex-wife. He does not hold himself forward as "the primary caretaker". The petitioner argues, however, that the child should be found to "medically live" in Vermont with him based on his power to make medical decisions for him.

There is nothing in the above law or regulations that would support the petitioner. Furthermore, as the "living with" requirement is a federal one, the Massachusetts welfare department must have already determined that the child is living with his mother in that state for Medicaid purposes. It cannot also be found that the child is also "living with" the father in Vermont as he cannot be eligible for Medicaid in two states. See M312.

As the facts do not support a finding that the petitioner is the primary caretaker of this child, the child cannot be found to be eligible for benefits through his father. The fact that the father has not applied for benefits for himself does not alter the above analysis.[4] See Fair Hearing No. 10,732. For this reason the Department's decision in this matter is affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19. The petitioner is urged to seek redress of his difficulties through the family court or through the mediation procedures outlined in his court order.

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